

FILED

NOV - 5 2019

CLERK, U.S. DISTRICT COURT  
NORFOLK, VA

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

In re:  
ZETIA (EZETIMIBE) ANTITRUST  
LITIGATION

MDL NO. 2:18md2836

ORDER

This matter comes before the court on the Direct Purchaser Plaintiffs' ("DPPs")<sup>1</sup> Motion for Class Certification for Purposes of Settlement with Par Pharmaceutical, Inc., Appointment of Class Counsel, Preliminary Approval of Proposed Settlement, Approval of the Form and Manner of Revised Notice to the Class, Appointment of a Notice Administrator, a Stay of all Proceedings in the MDL as against Par, and Setting the Final Settlement Schedule and Date for a Fairness Hearing ("Motion"), and accompanying Memorandum in Support, filed on July 15, 2019. ECF Nos. 371, 373. On July 29, 2019, the Glenmark Defendants<sup>2</sup> and Merck Defendants<sup>3</sup> filed

---

<sup>1</sup> The Direct Purchaser Plaintiffs consist of FWK Holdings, LLC; Rochester Drug Co-Operative, Inc.; and Cesar Castillo, Inc.

<sup>2</sup> The Glenmark Defendants consist of Glenmark Pharmaceuticals, Ltd. and Glenmark Pharmaceuticals Inc., USA, the latter incorrectly identified as Glenmark Generics Inc., USA.

<sup>3</sup> The Merck Defendants consist of Merck & Co., Inc.; Merck Sharp & Dohme Corp.; Schering-Plough Corp.; Schering Corp.; and MSP Singapore Co. LLC.

Responses. ECF Nos. 407, 418. On August 5, 2019, the DPPs filed a Reply. ECF No. 466.

On August 8, 2019, the Motion was referred to United States Magistrate Judge Douglas E. Miller pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), to conduct necessary hearings and to submit to the undersigned district judge proposed findings of fact, if applicable, and recommendations for the disposition of the Motion. ECF No. 485. The Magistrate Judge held a hearing on the Motion on September 23, 2019, ECF No. 641, and submitted a Report and Recommendation ("R&R") on October 1, 2019, ECF No. 668. No objections to the R&R were filed.

The R&R addressed each of the seven matters raised in the Motion. First, the R&R recommended that this court certify the proposed settlement class under Federal Rule of Civil Procedure 23(a). R&R at 14-16. Second, the R&R noted that this court has already found that the proposed class counsel meets the requirements of Federal Rule of Civil Procedure 23(a) and has appointed it as class counsel. *Id.* at 16; ECF No. 105. Third, the R&R recommended that this court grant preliminary approval of the proposed settlement between the proposed settlement class and Par, as necessary to pursue a Fairness Hearing for a determination of final approval of the proposed settlement. R&R at 16-17. Fourth, the R&R recommended that this court approve the modified proposed

Notice Plan, which was attached as Exhibit B to the R&R. Id. at 17. Fifth, the R&R recommended that this court appoint RG/2 Claims Administration LLC as Settlement Administrator, with responsibility for carrying out the Notice Plan. Id. at 16. Sixth, the R&R recommended that this court grant a stay of proceedings against Par. Id. at 12. Finally, the R&R recommended that this court schedule a Fairness Hearing, after which the court will decide whether to grant final approval of the proposed settlement. Id. at 16-17. These recommendations were reflected in a proposed Order, which the Magistrate Judge approved and attached as Exhibit A to the R&R.

By copy of the Magistrate Judge's R&R, the parties were advised of their right to file written objections to the findings and recommendations made by the Magistrate Judge within fourteen (14) days from the date of the mailing of the R&R to the objecting party. R&R at 17-18. Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, a district court, having reviewed the record in its entirety, shall make a de novo determination of any portions of the magistrate judge's findings and recommendations to which the Defendants have specifically objected. Fed. R. Civ. P. 72(b). The district court may accept, reject, or modify, in whole or in part, the recommendation of the magistrate judge, or recommit the matter to him with instructions. 28 U.S.C. § 636(b)(1).

No objections to the R&R having been filed, the court **ADOPTS** **AND APPROVES IN FULL** the findings and recommendations set forth in the Magistrate Judge's thorough and well-reasoned R&R, ECF No. 668. While this court approves of the Order and Notice, attached as Exhibits A and B to the R&R, respectively, this court will refrain from entering those documents until a date for the Fairness Hearing is scheduled. Accordingly, the court **GRANTS** the DPPs' Motion, ECF No. 371, as subsequently modified. See ECF No. 649. This court **DIRECTS** the Calendar Clerk to schedule a Fairness Hearing, on a date no sooner than one-hundred (100) days following entry of this Order.

The Clerk is **DIRECTED** to send a copy of this Order to counsel for all parties.

**IT IS SO ORDERED.**

/s/   
**Rebecca Beach Smith**  
**Senior United States District Judge**

---

Rebecca Beach Smith  
Senior United States District Judge

November 5, 2019